

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
  
Plaintiff/Respondent,  
  
v.  
  
REYES VILLA-RAMIREZ,  
  
Defendant/Petitioner.

No. CR-11-0111-EFS  
(Civ. No. CV-13-0196-EFS)

**ORDER DENYING MOTION UNDER 28  
U.S.C. § 2255 TO VACATE, SET  
ASIDE, OR CORRECT SENTENCE BY A  
PERSON IN FEDERAL CUSTODY**

**I. INTRODUCTION**

Before the Court, without oral argument, is Defendant Reyes Villa-Ramirez's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by A Person in Federal Custody, ECF No. 69. The motion has not been served on the U.S. Attorney's Office (USAO), and the Court has not yet directed the USAO to respond. Defendant seeks to overturn his conviction and sentence on numerous grounds. Having reviewed his motion and the record in this matter, the Court is fully informed. For the reasons set forth below, the Court denies Defendant's motion.

**II. BACKGROUND**

On July 19, 2011, Defendant was indicted for knowingly and intentionally distributing 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, in violation of 21

1 U.S.C. § 841. ECF No. 1. Defendant was arraigned on July 22, 2011.  
2 ECF No. 15. On August 25, 2011, the USAO filed a Superseding  
3 Indictment alleging three counts: 1) distribution of 50 or more grams  
4 of a mixture or substance containing a detectable amount of  
5 methamphetamine; 2) possession with intent to distribute 50 grams or  
6 more of a mixture or substance containing a detectable amount of  
7 methamphetamine; and 3) unlawful re-entry into the United States, in  
8 violation of 8 U.S.C. § 1326. Defendant was arraigned on the  
9 Superseding Indictment on September 2, 2011. ECF No. 34.

10 On October 20, 2011, the Defendant appeared before this Court  
11 and pled guilty to Counts 2 and 3 of the Superseding Indictment. ECF  
12 No. 41. The Court discussed the plea agreement with the Defendant at  
13 length, and the Court advised the Defendant of the constitutional  
14 rights he was giving up by pleading guilty. *Id.* The plea agreement  
15 was filed the same day; it was signed by the USAO, defense counsel,  
16 Defendant, and a Spanish-speaking interpreter who interpreted it for  
17 Defendant. ECF No. 42. The Court found that Defendant's guilty plea  
18 was knowing, intelligent, and voluntary, and not induced by fear,  
19 coercion, or ignorance; the Court therefore accepted Defendant's  
20 guilty plea and the plea agreement. ECF No. 43.

21 On October 15, 2012, the Court sentenced Defendant to a total  
22 term of imprisonment of 108 months and a total term of supervised  
23 release of five years. ECF No. 65. The Court also imposed a special  
24 penalty assessment of \$100 per count of conviction, for a total of  
25 \$200. *Id.* Judgment was entered on October 22, 2012. On May 28,  
26 2013, Defendant filed the instant motion. ECF No. 69.

1                                   **III. LEGAL STANDARD**

2           A prisoner in federal custody may attack his sentence on the  
3 grounds that such sentence was imposed in violation of the  
4 Constitution or federal law, the Court did not have jurisdiction to  
5 impose such a sentence, the sentence was in excess of the maximum  
6 authorized by law, and/or the sentence is otherwise subject to  
7 collateral attack. 28 U.S.C. § 2255. The Court examines a § 2255  
8 motion and the record to determine whether summary dismissal is  
9 warranted. Rules Governing § 2255 Proceedings for the U.S. Dist.  
10 Courts 4(b). The Court must deny the motion "[i]f it plainly appears  
11 from the face of the motion and any annexed exhibits and the prior  
12 proceedings in the case that the movant is not entitled to relief."  
13 *Id.*; see also *Baumann v. United States*, 692 F.2d 565, 571 (9th Cir.  
14 1982).

15                                   **IV. DISCUSSION**

16           Defendant challenges his conviction and sentence on the  
17 following grounds: 1) his counsel promised him a sentence of five (5)  
18 years if he pled guilty; 2) his counsel never informed him about his  
19 constitutional rights and never provided him with a written copy of  
20 the Indictment; 3) he never had sufficient access to legal material  
21 while in custody prior to sentencing because the detention center did  
22 not provide Spanish legal resources, computer-based legal research  
23 tools, or qualified translators; 4) the Court improperly imposed  
24 supervised release because Defendant is an alien and ineligible for  
25 supervised release; and 5) he has been improperly assessed a \$200  
26 special assessment, instead of the \$100 assessment.

1 Before addressing the substance of these claims, the Court notes  
2 that Defendant is expressly precluded from bringing a § 2255 motion  
3 except under very limited circumstances because of the waiver  
4 contained in his plea agreement. Accordingly, the Court begins by  
5 analyzing which, if any, of Defendant's allegations may be raised by  
6 way of a § 2255 motion.

7 **A. Waiver of Post-Conviction Motions**

8 In his Plea Agreement, Defendant "expressly waive[d] his right  
9 to file any post-conviction motion attacking his conviction and  
10 sentence, including a motion pursuant to 28 U.S.C. § 2255, except one  
11 based upon ineffective assistance of counsel based on information not  
12 known by Defendant and which, in the exercise of due diligence, could  
13 not be known by Defendant by the time the Court imposes the sentence."  
14 ECF No. 42, at 10-11. Interpreting Defendant's § 2255 motion in a  
15 light most favorable to the Defendant, the Court concludes that the  
16 first two grounds for relief may raise ineffective-assistance-of-  
17 counsel ("IAC") claims; the final three grounds for relief, however,  
18 plainly do not. Accordingly, Defendant has waived the ability to  
19 assert his third, fourth, and fifth grounds for relief.

20 However, it is not simply enough that Defendant assert IAC  
21 claims; he must also show that such claims are based on information  
22 not known by the Defendant at the time of his plea and which, in the  
23 exercise of due diligence, could not be known by the Defendant at the  
24 time of his sentencing. As to the first ground, Defendant's unadorned  
25 assertion that defense counsel promised him a sentence of five years  
26 is entirely belied by his signed representation in his Plea Agreement

1 that "no promises of any type have been made to [him] with respect to  
2 the sentence the Court will impose in this matter." ECF No. 42, at 3.  
3 When sentence was imposed, Defendant never informed the Court that he  
4 had been promised a different sentence by counsel. There is no new  
5 information that he learned following his sentencing that has created  
6 an IAC claim; to the extent one exists, it existed before his  
7 sentencing; and by not timely asserting it, Defendant has waived it  
8 pursuant to his Plea Agreement

9 As to the second ground for relief, Defendant *may* have stated a  
10 plausible IAC claim with respect to the failure to receive a written  
11 copy of the Indictment; assuming that this failure would constitute  
12 IAC, Defendant has sufficiently pled that he was not aware of such  
13 failure until after sentencing due to his limited access to Spanish-  
14 language legal resources while in custody awaiting sentencing.  
15 However, to the extent he also claims that he was not properly aware  
16 of his constitutional rights at the time he pled guilty, this claim is  
17 again belied by paragraph 5 of his Plea Agreement, which specifically  
18 advised him of the constitutional rights he was giving up by pleading  
19 guilty. ECF No. 42, at 4. Moreover, before accepting his plea, the  
20 Court extensively reviewed his constitutional rights with him, ECF No.  
21 41, and the Court ultimately found that his plea was knowing,  
22 intelligent, and voluntary. ECF No. 43. In light of this, to the  
23 extent Defendant has an IAC claim, it was not based on information  
24 learned after the time of sentencing and has therefore been waived.

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1 **B. Presentment of Indictment**

2 Turning now to the lone potential ground for § 2255 relief that  
3 survives Defendant's post-conviction-motion waiver, Defendant claims  
4 he was not provided with a written copy of the Indictment throughout  
5 these criminal proceedings, and that his counsel's failure to provide  
6 him with one constitutes IAC. Assuming *arguendo* that this failure  
7 would constitute IAC if it actually occurred, the record in this  
8 matter demonstrates that it did not occur. At the arraignment on both  
9 the Indictment and the Superseding Indictment, Defendant signed an  
10 Acknowledgment of Notice of Rights form in which he acknowledged 1)  
11 receiving a copy of the charging document setting forth the  
12 allegations, 2) that he was advised of the maximum penalty allowable  
13 under the law; and 3) the various constitutional rights he possessed.  
14 See ECF Nos. 13 & 36. Moreover, the Court reviewed the contents of  
15 the Superseding Indictment with the Defendant during his change-of-  
16 plea hearing and concluded that he fully understood the nature of the  
17 charges against him. In light of his signed declaration to the  
18 contrary, his unadorned assertion that he never received a written  
19 copy of the Indictment is without merit.

20 **C. Non-IAC Claims**

21 Although the Court has concluded that Defendant's remaining  
22 grounds for relief are barred in light of his waiver of his right to  
23 bring a post-conviction § 2255 motion, the Court nonetheless addresses  
24 several of these claims to demonstrate that they also lack substantive  
25 merit.

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1 First, Defendant's unadorned assertion that the Illegal  
2 Immigration Reform Act of 1996 bars the Court from imposing probation  
3 is entirely unsupported; Defendant has not cited to any provision of  
4 the law that does so, and in fact, on several occasions, the Act  
5 implicitly acknowledges that an illegal alien may be serving a  
6 sentence of probation. See, e.g., Pub. L. 104-208 sec. 303 (codified  
7 at 8 U.S.C. § 1226) (authorizing the Attorney General to take into  
8 custody any alien meeting certain criteria "when the alien is  
9 released, without regard to whether the alien is released on parole,  
10 supervised release, or probation[.]"). But even if Defendant's  
11 contention were true, the Court did not impose probation on Defendant;  
12 it sentenced him to supervised release following his period of  
13 custody. ECF No. 66. Although Defendant will likely be deported  
14 following his period of incarceration, his five-year sentence of  
15 supervised release remains intact; and should he reenter the country  
16 after removal,<sup>1</sup> he must report to the U.S. Probation Office within 72  
17 hours of his return. See *id.* at 4.

18 Second, Defendant's belief that he should only be paying a \$100  
19 special penalty assessment is incorrect. He was sentenced to pay a  
20 \$100 assessment *per count of conviction*, as required by statute. See  
21 18 U.S.C. § 3013(a)(2)(A); see also ECF No. 66. Defendant pled guilty  
22 to and was convicted of two counts; hence, he must pay \$200.

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23  
24 <sup>1</sup> The Court also reminds Defendant that if Defendant is removed following  
25 his sentence, he must obtain the permission of the Attorney General  
26 before reentering United States; otherwise, Defendant may be subject to  
new criminal charges and penalties. See, e.g., 8 U.S.C. § 1326.

V. CONCLUSION

For the foregoing reasons, **IT IS HEREBY ORDERED:**

1. Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by A Person in Federal Custody, **ECF No. 69**, is **DENIED**.

2. The Court **DECLINES** to issue a certificate of appealability.

3. The Clerk's Office is directed to **CLOSE** the file in the related civil action, Cause No. CV-13-0196-EFS.

**IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and provide copies to the Defendant at his last-known address.

**DATED** this 30<sup>th</sup> day of July 2013.

s/ Edward F. Shea

EDWARD F. SHEA

Senior United States District Judge